

**RESOLUTION NO. 69-94
OF THE GOVERNING BODY OF THE
YAVAPAI-APACHE TRIBE**

(Yavapai-Apache Code)

WHEREAS, the Yavapai-Apache Law & Order Code originally adopted in 1978 has been amended on several occasions to reflect the current needs of the Tribe; and,

WHEREAS, the current 1978 Law & Order Code contains numerous provisions which are not necessarily "Law & Order" matters; and,

WHEREAS, the Yavapai-Apache Tribal Council finds it in the Tribes best interests to adopt a comprehensive Code for the efficient administration of government; and,

WHEREAS, the new Code contains all previous chapters contained in the original Law & Order Code, as amended, as well as new provisions recently adopted by the Tribal Council.

NOW THEREFORE BE IT RESOLVED that the Yavapai-Apache Tribal Council hereby adopts the attached Code including but not limited to Chapters 2, 3, 4, 6, 7, 8, 9, 12 and 17 until such time as this Code and these Chapters may be amended by subsequent enactments; and,

BE IT FURTHER RESOLVED that this Code shall be referred to as the "Yavapai-Apache Code" and shall be cited as the "YAC."

CERTIFICATION

I, the undersigned, hereby certify that a duly called meeting of the Yavapai-Apache Tribal Council on Sept. 28, 1994, the Tribal Council voted to adopt this Resolution by an affirmative vote of a quorum of Tribal Council Members.


Theodore Smith, Sr., Chairman

ATTEST:



Secretary

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CHAPTER 6

JUVENILE CODE

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CHAPTER 7

JUVENILE CODE

Sec. 7.1 Tribal Juvenile Court Established

There is hereby established a division of the Yavapai-Apache Tribal Court called the Yavapai-Apache Juvenile Court.

Sec. 7.2 Juvenile Court Judges

The chief judge of the Yavapai-Apache Community Court shall assign one or more judges to sit on juvenile cases.

Sec. 7.3 Jurisdiction

The Juvenile Court shall have original jurisdiction of all persons within the territorial jurisdiction of the Yavapai-Apache Reservation as follows:

- (a) Concerning any child who is alleged to have violated any Federal, Tribal, State or Local law or municipal ordinance.
- (b) A child who is neglected or dependent as defined in Sec. 7.27 (q) of this ordinance; or beyond the control of his or her parent, custodian or school authorities as defined in Sec. 7.27 (r) and (t).
- (c) To determine the custody of any child or appoint a guardian of any child who comes within the preview of the Court's jurisdiction under other provisions of this Section.
- (d) To determine the legal parent-child relationship, including

termination of residual parental rights and duties, as to a child who comes within the preview of the court's jurisdiction under other provisions of this section.

(e) For judicial consent to the marriage, employment or enlistment of a child in the armed forces, and to emergency medical or surgical treatment of a child who comes within the preview of the court's jurisdiction under other provisions of this section.

(f) For the treatment or commitment of a mentally defective or mentally ill child who comes within the preview of the court's jurisdiction under other provisions of this section.

(g) Waiver of jurisdiction:

Every case submitted to a judge of the Juvenile Court shall be decided within sixty days from the submission thereof; provided, that if a rehearing shall have been ordered, within said period of 60 days the period within which a decision must be made shall commence at the time the case is submitted on such rehearing.

Sec. 7.4 Transfer

Exercise of jurisdiction over a child on probation or under protective supervision or of a child who is otherwise under the continuing jurisdiction of the court, may be transferred by the court, if the receiving court consents, to any court with jurisdiction.

Sec. 7.5 Jurisdiction Over Adults

The Juvenile Court shall have exclusive original jurisdiction to try all adults who are subject to the jurisdiction of the Yavapai-Apache Tribal Court for offenses committed against children, as follows:

(a) Any adult who induces, aids, or encourages a child to violate any Federal, State or Local law or municipal or Community Ordinance, or who aids or contributes to the dependency or neglect of any child:

(b) Any adult having a child in his legal or physical custody, or in his employment who willfully ill-treats, neglects or abandons such child in any manner likely to cause the child unnecessary suffering or serious injury to his health or morals.

(c) Any adult who forcibly takes away any child from or induces him to leave, the legal or physical custody of any person, agency or institution in which the child has been legally placed for the purpose of care, support, education or adoption, and any person who detains or harbors such child after demand is made for the return of such child by an officer of the court or by the person, agency or institution concerned.

(d) Any adult who commits the crime of child beating.

Sec. 7.6 Duties and Powers of Juvenile Judges

In carrying out duties and powers specifically enumerated under the Juvenile Code, judges of the Juvenile Court shall have the same powers and duties as judges of the Yavapai-Apache Tribal Court.

Sec. 7.7 Cooperation with Other Agencies

The Juvenile Court is authorized to cooperate fully with any community, state, federal public or nonprofit agency to carry out the purposes of this Code, and is authorized to participate in any training programs or other programs which will improve the Juvenile Court system and carry out the purposes of this Code; subject to approval by the Yavapai-Apache Tribal Council of any expenditure of funds.

Sec. 7.8 Utilization of Social Services

The Juvenile Courts in the exercise of their duties and in the exercise of any duties to be performed by other officers under their supervision or control shall utilize such social services as may be furnished by the federal, tribal or state governments to the end that the court may be economically administered without unnecessary duplication or expense.

Sec. 7.9 Placement of Children

The Juvenile Courts may contract, on behalf of the tribe, with agencies or departments of the Tribe, the State of Arizona, any municipality or the Federal Government.

Sec. 7.10 Officers-Appointment. Salary and Duties

(a) The Juvenile Court, with the approval of the Tribal Council, shall appoint probation officers, and other persons as may be required to carry out the work of the court.

(b) The probation officer shall make preliminary inquiries, social studies, and such other investigations as the court may direct, and shall keep written records of such investigations or studies, and shall make reports to the court. Upon the placing of any person on probation or under protective supervision, the probation officer shall explain to the child, the parents and other persons concerned the meaning and conditions of probation or protective supervision. The probation officer shall keep informed concerning the conduct and condition of each person on probation or under protective supervision and shall report thereon to the court. Probation officers shall use all suitable methods to bring about improvements in the conduct or condition of persons on probation or under protective supervision and shall perform such other duties in connection with the care, custody, or transportation of children as the Court may require. Probation officers shall have the powers of peace officers for purposes of this ordinance, but shall, whenever possible refrain from exercising such powers except in urgent situations in which a regular peace officer is not immediately available.

(c) The compensation of all employees of the Juvenile Court shall be set by the Chief Judge of the Tribal Court subject to approval by the Tribal Council.

(d) The judges of the Juvenile Court may appoint a probation officer or other qualified person as referee to serve during the pleasure of the court provided that no employee of the Bureau of Indian Affairs, United States Department of Interior, shall be eligible to serve as referee and no

probation officer who has had any previous connection with the child involved in any particular case, either by investigation, protective supervision, probation or otherwise, shall act as referee in any hearing involving such child.

(e) A judge may refer any case to a referee, or he may direct that all cases of a certain nature or within a certain geographical area shall be heard in the first instance by a referee, in the same manner as cases are initiated and hearings are held by the court. At the conclusion of the hearing before him, the referee shall transmit to the judge all papers relating to the case, together with his findings and recommendations in writing.

(f) At the conclusion of the hearing the referee shall advise the parties of his findings and recommendations and of their right to request a rehearing before the judge. A rehearing before the judge shall be held if a request is filed with the judge by any interested party within five days after the conclusion of the hearing before the referee. If no rehearing before the judge is requested, the findings and recommendations of the referee, when confirmed by an order of the judge, shall become the decree of the court. The judge may, on his own motion at any time, order a rehearing before him of any case heard before a referee.

Sec. 7.11 Operation of the Juvenile Court

(a) Court sessions shall be held within the Yavapai-Apache Reservation at such place and at such time as the Court shall direct.

(b) In prosecution of adults, as may be necessary in accordance

with Sec. 7.5 of this Code, the practice and procedure of the Yavapai-Apache Tribal Court shall prevail.

(c) Any adult who commits any act as described in Sec. 7.5 of this Code, and found guilty of a misdemeanor, shall be punished by imprisonment in the Tribal Jail for a period not to exceed six months and/or by fine not to exceed \$500.00.

(d) Proceedings in Connection with children's cases shall be:

1. Proceedings in children's cases are commenced by petition. Any person may, and any peace officer shall, give the court any information in his possession that a person is or appears to be a child within the jurisdiction of the court. Whenever such information is received, the court may require a preliminary inquiry to be made under the direction of the court to determine whether the person is a child within the meaning and purposes of this ordinance and if so whether the interest of the public or the interest of the child require further action to be taken.

2. On the basis of the information received and preliminary inquiry, if one is made, the court may direct that the petition be filed; or the court may make such informal adjustment of the case as is practicable, provided that the facts are admitted and establish prima facie jurisdiction, and, provided, that consent is obtained from the parents or other custodian of the child, and that consent is also obtained from the child if he is of sufficient age and understanding. Efforts to effect an informal adjustment may be continued no longer than three months without review by a judge.

3. The petition shall set forth with particularity the facts which are alleged to bring the person within the jurisdiction of the court. The petition shall further state; (a) the name, age and residence of the person; (b) the names and residences of his parents; (c) the names and residences of his guardian, if there is one; (d) the name and address of the nearest known relative, if no parent or guardian is known; and (e) the name and residence of the person having physical custody of the child; and (f) the identity of social agencies known to be giving care and services to the person and his family. If any of the facts herein required to be stated are not known by the petitioner, the petitioner shall so state.

4. The petition may be prepared and filed by any probation officer or peace officer or other person acquainted with the facts. The petition shall be verified. Statements in the petition may be made upon information and belief.

5. The court may order that a child be examined by a physician, surgeon, psychiatrist or psychologist and may place the child in a hospital or other facility for such examination. However, the child shall not be held in such hospital or facility longer than 48 hours, excluding week-ends and holidays, unless necessary for treatment of physical injuries, without a hearing before the court. After due notice and a hearing set for the specific purpose, the court may order a medical examination of a parent or guardian whose ability to care for a child is at issue, if the court finds from the evidence presented at hearing that the parent's or guardian's physical, mental or emotional condi-

tion may be a factor in causing the neglect, dependency or delinquency of the child.

6. The court may dismiss a petition at any stage of the proceedings.

7. In the case of violations of motor vehicle laws or ordinances a petition shall not be required, and the issuance of a citation or summons shall be sufficient to invoke the jurisdiction of the court.

8. When a petition has been filed under this ordinance a child shall not thereafter be subject to criminal prosecution based on the facts giving rise to the petition, except as otherwise provided in this ordinance.

(e) The Service of Process and Search Warrants shall be as follows:

1. After a petition is filed and after such further investigation as the court may direct, the court shall promptly issue summons for hearing the case. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the Clerk of the Court at or prior to the hearing.

2. The summons shall contain the name of the court, the title of the proceedings, and (except for a published summons) a brief statement of the substance of the allegations in the petition. A published summons shall simply state that a proceeding concerning the child is pending in the court and an adjudication will be made. The summons shall require the person or persons who have physical custody of the child to appear personally and bring the child before the court at a time and place stated. If the person or persons so summoned are not the parent, parents, or guardian of the child,

then summons shall also be issued to the parent, parents or guardian as the case may be notifying them of the pendency of the case of the time and place set for the hearing.

3. Summons may be issued to any person within the jurisdiction of the court requiring the appearance of any other person whose presence the court deems necessary.

4. If it appears to the court that the welfare of the child or of the public requires that the child be taken into custody, the court may, at any time after a petition is filed, make an order providing for detention or shelter.

5. Upon the sworn testimony or signed statement of a physician, the court may order emergency medical or surgical treatment which is immediately necessary for a child concerning whom a petition has been filed pending the service of summons upon his parents, guardian or custodian.

6. A parent or guardian shall be entitled to the issuance of compulsory process for the attendance of witnesses on his own behalf or on behalf of the child. A guardian ad litem or a probation officer shall be entitled to compulsory process for the attendance of witnesses on behalf of the child.

7. The court may authorize the payment of necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing of a case under this ordinance, not to exceed the amount allowed to witness for travel in the Tribal Court.

8. Service of summons or process shall be made by an officer of the Tribal Police, but, upon request of the court, such service may be made by any other peace officer, or by another suitable person appointed by the court. Service of summons on Tribal lands may be made by delivering a copy thereof to the person summoned; however, parents who are living together at their usual place of abode may be served by delivery of two copies of the summons to either. That personal service of the summons is impractical under the circumstances, he may order service by registered mail with return receipt requested to be signed by the addressee only, to be addressed to the last known address of the person to be served on Tribal land. Service shall be complete upon return of the signed receipt to the court.

9. If the parent, parents, or guardian required to be summoned cannot be found within tribal lands, the fact of their child's presence within tribal lands shall confer jurisdiction on the court in proceedings in children's cases under this ordinance as to any absent parent or guardian, provided that due notice has been given in one of the following manners:

(a) If the address of the parent or guardian is known, by sending him a copy of the summons by registered mail with a return receipt requested to be signed by the addressee only, or by personal service outside the reservation. Service by mail shall be complete upon return to the court of the signed receipt.

(b) If the address or whereabouts of the parent or guardian outside tribal lands cannot after diligent inquiry be ascertained, by publishing

a summons in a newspaper having general circulation on Tribal lands. The summons shall be published once a week for three successive weeks. Service shall be completed on the day of the last publication.

10. In the case of service on tribal lands, service completed not less than 48 hours before the time set in the summons for the appearance of the person served shall be sufficient to confer jurisdiction. In the case of service outside tribal lands, service completed not less than 5 days before the time set in the summons for appearance of the person served shall be sufficient to confer jurisdiction.

11. If the summons cannot be served, or, if it appears to the Court that the person served will not obey the summons, that serving the summons will be ineffectual, or that the welfare of the child requires that he be brought immediately into custody of the court, a warrant may be issued for the arrest of the parent, the guardian, the custodian, or the child, and any such warrant may be served anywhere within the jurisdiction of the court.

12. If it appears to the court upon affidavit sworn to by a peace officer or any other person, and upon the examination of other witnesses if required by the judge, that there is probable cause to believe that a child is being detained or ill-treated in any place within the jurisdiction of the court, the court may issue a warrant authorizing a duly authorized police officer or probation officer to search for the child. Upon serving such warrant upon the person in possession of the premise specified in the warrant, the police officer making the search may enter the house or premises

by force if necessary in order to remove the child. The officer must thereupon take the child to the court or the place of detention or shelter designated by the court in accordance with Sec. 7.13 hereof.

Sec. 7.12 Investigation and Hearing

(a) After adjudication that a child is delinquent, dependent, neglected and incorrigible, the court may require that a social investigation to be made and that a report be submitted to the court in writing in all cases under this Code in which a petition has been filed.

(b) The investigation shall cover the child's home environment history and associations, the present conditions of the child and family, and recommendations as to the child's future care. In cases involving the duty of support, the study shall include such matters as earnings, assets, financial obligations and employment.

(c) Proceedings in children's cases shall be regarded as civil proceedings, with the court exercising certain equitable powers. Nevertheless, the fact that the proceedings are of civil nature shall not be construed to deprive the child of his rights to counsel, to confront accusers and to cross-examine witnesses against him, nor to deny him his privilege against self-incrimination.

(d) Hearings in children's cases shall be before the court without a jury and may be conducted in an informal manner. The general public shall be excluded and only such persons as the judge finds have a direct and

legitimate interest in the case or in the work of the court shall be admitted. At the discretion of the court, the child may be separately interviewed at any time if represented by his counselor. The hearing may be continued from time to time to a date specified in the order.

(e) The record of the proceedings shall be kept in accordance with the practice in civil cases before the tribal courts of the Yavapai-Apache Reservation, unless the court otherwise directs.

(f) Neither the record in the Juvenile Court nor any evidence given therein shall be admissible as evidence against the child in any proceedings in any other court. No child shall be charged with crime nor be convicted in any Tribal Court except as provided in this Code. Upon reaching the age of 18 a child's record shall be destroyed.

(g) Any party, including the community, shall have a right to be represented by a counselor in any proceeding under this Code. Prior to any hearings the court shall inform the parents, guardians, or custodian, and the child when it is appropriate to do so, that they have a right to be represented by a counselor. The counselor shall be any person permitted to appear before the Yavapai-Apache Tribal Court and shall be subject to such rules as may be prescribed by the Tribal Judges or the Tribal Council in order to practice before the Tribal Courts.

(h) The hearing shall consist of three portions:

1. Arrangement, Plea and Detention Hearing.
2. Findings as to allegations in the petition. Findings of fact.

by the judge as to allegations in the petition shall be based on the standard requiring proof of each material allegation beyond a reasonable doubt and shall be made upon the evidence admissible under the rules applicable to the trial of a criminal case in the Yavapai-Apache Tribal Court.

3. Disposition. In the disposition portion of the hearings any relevant and material information shall be admissible.

(i) Parties adversely affected by a final disposition shall be informed of their right to appeal pursuant to Sec. 7.25 of this Code.

(j) When more than one child is involved in a home situation which may be found to constitute neglect or dependency, or when more than one child is alleged to be involved in the same violation, the proceedings may be consolidated, except that separate hearings may be held with respect to disposition.

(k) When it appears during the course of any proceedings in a child's case that evidence presented points to material facts not alleged in the petition, the court may proceed to consider the additional matters raised by the evidence. The court, on motion of any interested party or on its own motion, shall direct that the petition be amended to conform to the evidence. If the amendment results in a substantial departure from the facts originally alleged, the court shall grant such continuance as justice may require. The court may grant such continuances as it deems reasonable.

(l) A parent, guardian, custodian, or next friend of any child whose status has been adjudicated under this Code, or any adult affected by

a child's proceeding hereunder, may at any time petition the court for a new hearing on the ground that new evidence which was not known and could not with due diligence have been made available at the original hearing and which might affect the decree, has been discovered. If it appears to the court that there is such new evidence which might affect its decree, it shall order a new hearing and enter such decree and make disposition of the case as is warranted by all the facts and circumstances and the best interest of the child.

Sec. 7.13 Arrest and Detention of Children

(a) A child may be taken into custody by any police officer or probation officer pursuant to an order of the court.

(b) A child may be taken into custody by a police officer or probation officer without order of the court:

1. When in the presence of the officer the child has violated a state, federal or tribal law or ordinance;
2. When there are reasonable grounds to believe that he has committed an act which, if committed by an adult, would be a felony;
3. When he is seriously endangered in his surroundings, and immediate removal appears to be necessary for his protection;
4. When there are reasonable grounds to believe that he has committed an act, which, if committed by an adult, would be a breach of peace; or
5. When he has reason to believe that the child requires immediate care or medical attention.

(c) When an officer takes a child into custody, he shall immediately notify the parents, guardian, or custodian.

(d) A child shall not be detained by the Tribal Police any longer than is reasonably necessary to obtain his name, age, residence and other information, and to contact and obtain the appearance of his parent, guardian or custodian. A police officer, other than the probation officer, who arrests a child under the age of 18 years shall forthwith notify the probation officer, and shall make such disposition of the child as the probation officer directs. No child shall be held in the detention for more than 24 hours unless a petition alleging delinquent conduct has been filed and no child shall be held longer than 24 hours after the filing of said petition, unless so ordered by the court after a hearing.

(e) The officer or other person who takes a child to a detention home shall promptly file with the court a brief written report stating the occurrences or facts which bring the child within the jurisdiction of the Tribal Juvenile court and giving the reason why the child was not released.

(f) After an investigation by a duly authorized officer of the court, the judge or other authorized officer with or without a hearing shall, upon written promise to bring the child to the court at a set time or without restriction, order the release of the child to his parents, guardian, or custodian if it is found that he can be safely left in their care. If it is found after a hearing for the purpose that it is not safe to release the child, the judge or authorized officer may order that the child be held

in an appropriate facility, subject to further order of the court.

Sec. 7.14 Disposition of Cases

When a child is found to come within the provisions of Sec. 7.3 of this Code, the court shall so adjudicate, and make findings of the facts upon which it bases its jurisdiction over the child. After such adjudication, the court may make the following dispositions by court order:

- (a) Require the child to submit a periodic counseling;
- (b) Place the child on probation or under protective supervision (as these terms are defined herein) in his own home upon conditions determined by the court;
- (c) Place the child in the legal custody of a relative or other suitable person, with or without probation or protective supervision;
- (d) Commit the child to an authorized industrial school except that ; a child found to come within the court's jurisdiction solely on the grounds of neglect or dependency under Sec. 7.13 of this Code may not be committed to an industrial school or any other similar institution.
- (e) Place the child in an approved boarding school, on a ranch, a forestry camp, other camp, or a similar facility, for care, and for work, if possible, provided that the person, agency or associate operating the facility has been approved by the court and has otherwise complied with all applicable tribal, state and local laws. A child placed in a forestry camp or similar facility may be required to work on fire prevention, forestation, and

reformation, recreational works, forest roads and on other works on or off the grounds of such facility, and may be paid wages, all subject to the approval of, and under conditions set by the court.

(f) If the court has assurance that the responsibility to make payments will rest squarely on the child, and not on his parents, guardian or custodian, it may order that the child be required to make restitution for damage or loss caused by wrongful acts.

(g) Arrange for employment or work programs, to enable children to fulfill their obligations under Paragraph (f) of this section, and for other purposes when deemed desirable by the court.

(h) In cases of violation of traffic laws or ordinances, the court may, in addition to any other disposition, restrain the child from driving for such periods of time as the court deems necessary, and may take possession of the child's driving license.

(i) Order that the child be examined or treated by a physician, surgeon, psychiatrist, or psychologist, or that he receive other special care, and for such purpose may place the child in a hospital or other suitable facility.

(j) Appoint a guardian for the child where it appears necessary to do so in the interest of the child, and may appoint a public or private institution or agency in which legal custody of the child is vested, as such guardian.

Sec. 7.15 Primary Consideration - Welfare of the Child

In placing a child under the guardianship or legal custody of an individual or of a private agency or institution, the court shall give primary consideration to the welfare of the child, but whenever practicable may take into consideration the religious preferences of the child and of his parents.

Sec. 7.16 Establishment of Conditions by Court

In support of a decree under Sec. 7.3 of this Code, the Court may make an order setting forth reasonable conditions to be complied with by the parents, the child, his custodian, or any other person who has been made a part to the proceedings including, but not limited to, restriction on visitations by the parents or one parent, restrictions on the child's associates, occupation and other activities, and requirements to be observed by the parents or custodian.

Sec. 7.17 Hospitalization of Child

With respect to a child within the jurisdiction of the court under Sec. 7.3, the court may order hospitalization in an authorized hospital if the court finds, upon due notice to the parents or guardian and a special hearing conducted in accordance with the applicable laws and regulations, that the child is (a) mentally ill, and (b) because of his illness is likely to injure himself or others if allowed to remain at liberty, or is in need of custody, care or treatment in the mental hospital.

Sec. 7.18 Commitment to Training School

The court may make an order committing a child within its jurisdiction to an appropriate facility if the child has been found mentally deficient in accordance with the provisions of applicable law and regulations.

Sec. 7.19 Termination of Parental Rights

The court may terminate all parental rights, provided it complies with provisions of Sec. 7.23 of this Code.

Sec. 7.20 Other Disposition of Cases

The court may make any reasonable orders which are for the best interest of the child or are required for the protection of the public, except that no child may be committed to prison or any child under 16 years of age to jail upon adjudication under this ordinance. The court may combine several modes of disposition where they are compatible.

Sec. 7.21 Periodic Review of Cases

An order under this Section for the placement of a child with an individual or any agency shall include a date certain for a review of the case by the court, with a new date to be set upon each review. The maximum period of time between judgment and the first review and between successive reviews shall be six months.

Sec. 7.22 Judgments and Orders

(a) Jurisdiction of a child obtained by the Juvenile Court in a proceeding under this chapter shall, be retained by it, for the purposes of implementing the orders made and filed in that proceeding, until the child becomes 18 years of age, unless terminated by order of the court prior thereto.

(b) The court may modify or set aside any order or decree made by it; but no modification of an order placing a child on probation shall be made upon an alleged violation of the terms of probation, until there has been a hearing after due notice to all persons concerned.

(c) Notice and a hearing shall also be required in any case in which the effect of modifying or setting aside any order may be to deprive a parent of the legal custody of a child, to place the child in an institution or agency, or to transfer the child from one institution or agency to another, except that transfer from one foster home to another may be effected without notice and hearing.

(d) Notice of an order terminating probation or protective supervision shall be given to the parents, guardian, custodian and, where appropriate, to the child..

(e) An adjudication by the Juvenile Court that a child is within its jurisdiction under Sec. 7.3 of this Code shall not be deemed conviction of a crime.

Sec. 7.23 Custody of Children

(a) Before depriving any parent of the custody of his or her child, the court shall give due consideration to the preferred right of parents to the custody of their children and shall not transfer custody to another person agency or institution unless the court finds from all the circumstances in the case that the welfare of the child or the public requires that the child be taken from his parents.

(b) The court may decree a termination of parental rights as defined herein concerning a child within the preview of Sec. 7.3 hereof, if the provisions of Sec. 7.27 are complied with. The rights of one parent may be terminated without affecting the rights of the other parent.

(c) The rights of the parent of parents may be terminated if the court finds:

1. That the parent is unfit and incompetent by reason of conduct or condition seriously detrimental to the child; or

2. That the parent has abandoned the child. It shall be prima facie evidence of abandonment that the parent, although having legal custody of the child, has surrendered physical custody of the child, and for a period of one year following such surrender has not by some affirmative act manifested to the child or to the person having the physical custody of the child an intention to resume physical custody or to make arrangements for the care of the child; or

3. That after a period of trial, during which the child was kept in

his own home under protective supervision or probation, or during which the child was returned to live in his own house, the parent substantially and continuously or repeatedly refused or failed to give the child proper parental care and protection.

(d) A termination of parental rights may be ordered only after a hearing is held specifically on the question of terminating the rights of the parent. A parent must be advised as to his right to the assistance of counsel. No such hearing shall be held earlier than 10 days after service of summons is completed. The summons shall contain a statement that the rights of the parent may be terminated in the proceeding.

(e) Every order terminating the right of a parent shall recite the facts upon which the court based its jurisdiction over the child and shall include the findings upon which the decree is based.

(f) Upon the entry of an order terminating the rights of the parent the court may:

1. place the child for adoption under applicable law and regulations; or
2. make any other disposition of the child authorized under Sec. 7.14 hereof.

(g) If the rights of only one parent have been terminated, the rights of the other parent are not affected.

(h) Nothing contained in this section shall preclude a parent from surrendering permanent legal custody voluntarily by instrument in writing,

duly acknowledged, for purposes of adoption, and in accordance with applicable law and regulation.

(i) A parent, guardian or best friend of a child whose legal custody has been transferred by the court to an individual, agency, or institution, may petition the court for restoration of custody or other modification or revocation of the decree, on the ground that a change of circumstances has occurred which requires such modification or revocation in the best interest of the child. The court shall make preliminary investigation, and may dismiss the petition if it finds that the alleged change of circumstances, if proved, would not affect the decree. If the court finds that a further examination of the facts should be made, or if the court on its own motion determines that the decree should be reviewed, it shall conduct a hearing upon due notice to all persons concerned and may thereupon enter an order continuing, modifying, or terminating the decree.

(j) An agency granted legal custody shall have the right to determine where and with whom the child shall live, provided that placement of the child does not remove him from tribal lands without court approval. An individual granted legal custody shall exercise the rights and responsibility involved in legal custody personally, unless otherwise authorized by the court.

Sec. 7.24 Support of Children

(a) When legal custody of a child is vested by the court in an individual or agency other than his parents, the court may in the same or any subsequent proceeding inquire into the ability of the parents to support the

child and to pay any medical, psychiatric, or psychological examination or treatment provided under order of the court. The court may, after due notice and and a hearing on the matter, require the parents to pay the whole or pary of such support and expenses, depending on their financial resources and other demands on their funds. The amounts so required to be paid shall be paid at such intervals as the court may direct, and unless otherwise ordered, payment is made to the clerk of the Tribal Juvenile Court for transmission to the person or agency having legal custody of the child or to whom compensation is due. The Clerk of the Court shall have authority to receive periodic payments towards the care and maintenance of the child, such as social security payments made in the name of and for the benefit of the child.

(b) No court order issued under the preceding section against a parent shall be entered, unless summons has been served within the territorial jurisdiction of the tribe or a voluntary appearance is made or a waiver of service given. The summons shall specify that a hearing with respect to the financial support of the child will be held.

(c) An order entered under Sec. 7.24 of this ordinance against the parent may be enforced by contempt proceedings, and shall also have the effect of a judgment at law. In addition to other remedies, the court may issue an order to any employer, trustee, financial agency, or other person within the territorial jurisdiction of the Tribe, indebted to the parent, to withhold and pay over to the Clerk of the Court, moneys due or to become due. No property of the parents, or either of them, shall be exempt from execution to

enforce collection of the amounts ordered to be paid by the court under this section.

(d) If the court finds that the parents are unable to pay for full or partial support, examination, treatment and other expenses of the child and that no other provision for the payment of such support and expenses has been made, or if the parents have failed to make such payments, or if summons could not be served on the reservation upon the parents or other person under Sec. 7.24 (b) hereof, the court shall request the Yavapai-Apache Tribe or any other public agency with funds available for such purposes to pay for such support and other expenses and, if such department or agency consents, it shall be so ordered by the court.

(e) Payment for child support may be made to an agency in whom the court vests legal custody, provided that the agency shall make periodic reports to the court concerning the care and treatment the child is receiving and his response to such treatment. Such reports shall be made at such intervals as the court may direct, and shall be made with respect to each child at least every 6 months. The agency shall also afford an opportunity for a representative of the court to visit the child as frequently as the court deems necessary.

Sec. 7.25 Appeals

(a) An appeal to the Yavapai-Apache Tribal Court of Appeals may be taken from any order, decree, or judgment of the Tribal Juvenile Court.

Such appeals are taken from judgments or decrees of the Tribal Court. Provided that the appeal must be made within 10 days of the entry of the order, decree, or judgment appeal.

(b) Unless the court stays its order, the pendency of an appeal shall not stay the order or decree appealed from in a child's case. Where the order or decree appealed from directs a change of legal custody of a child, the appeal shall be heard and decided at the earliest practicable time. The name of the child shall not appear on the record of appeal.

Sec. 7.26 Miscellaneous Provisions

(a) There shall be no fee for filing a petition under Sec. 7.3 (a) and (b) of this Code, nor shall any fees be charged by any tribal officer for the service of process or for attendance in court in any such proceedings. Witness fees shall be payable in accordance with provisions for witnesses in other tribal courts.

(b) The court shall keep such records as may be required by the judge and by this ordinance. Records in children's cases shall not be deemed criminal records and shall not be open to public inspection; but the court may at its discretion authorize inspection by persons having a legitimate interest in the proceedings and by persons conducting pertinent research studies.

(c) This Code shall be known and may be cited as the Juvenile Code.

Sec. 7.27 Definitions

(a, "Adjudication" means a finding by the court on the facts alleged

in the petition and incorporated in a decree.

(b) "Adult" means a person who is an enrolled member of the Yavapai-Apache Tribe, or any other person subject to the jurisdiction of the Yavapai-Apache Tribe, who is 18 years of age or older.

(c) "Child" means a person who is an enrolled member of the Yavapai-Apache Tribe, or any other person subject to the jurisdiction of the Yavapai-Apache Tribe, who is under 18 years of age.

(d) "Child placement agency" means an agency receiving children for placement or adoption, which agency is licensed or approved where such license or approval is required by law.

(e) "Commit" means to transfer to legal custody.

(f) "Court" means the Juvenile Court Division of the Yavapai-Apache Tribal Court.

(g) "Delinquent child" is a child who is adjudicated to have committed a delinquent act. Refer to Sec. 7.3 (a).

(h) "Dependent child" is a child who is:

(1) Homeless or destitute or without proper support or care through no fault of his parent or guardian.

(2) Lacks proper care by reason of the mental or physical condition of his parent, guardian or custodian.

(3) Under the age of eight years who is found to have committed an act that would result in adjudication as a delinquent or incorrigible child if committed by an older child.

(i) "Deprivation of custody" means transfer to legal custody by the court from a parent or a previous legal custodian to another person, agency, or institution.

(j) "Detention" means the temporary care of children who require secure custody, in physically restricting facilities pending court disposition or transfer to another jurisdiction.

(k) "Guardian" means a guardian of the person and not a guardian of the property.

(l) "Guardianship of the Person" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor and to be concerned about his general welfare. It includes, among other things the authority to consent to marriage, enlistment in the armed forces, and major medical, surgical, or psychiatric treatment. "Guardianship of the person" also includes legal custody, if legal custody is not vested in another person, agency, or institution.

(m) "Incorrigible child" is a child adjudicated as one who refuses to obey the reasonable and proper orders or directions of his parent, guardian or custodian, and who is beyond the control of such person, or any child who habitually truant from school, or who is a runaway from his home or parent, guardian or custodian or who habitually so departs himself as to injure or endanger the morals or health of himself or other.

(n) "Legal Custody" means a relationship embodying the following rights and duties: the right to physical custody of a child; the right and duty

to protect, train and discipline him, the duty to provide him with food, clothing, shelter, education, and ordinary medical care; the right to determine where and with whom he shall live; and the right in an emergency, to authorize surgery or other extraordinary care. Legal custody is subject to res. of parental rights and responsibilities of the guardian of the person.

(o) "Neglected child" is a child who is:

(1) Abandoned by his parents, guardian or custodian;

(2) Subjected to mistreatment or abuse by a parent, guardian or custodian;

(3) Lacks parental care by reason of the fault or habits of the parent, guardian or custodian;

(4) Refused proper or necessary subsistence, education, medical or surgical care or other care necessary to the child's health, morals or well-being by the parent, guardian or custodian;

(5) Refused the special care made necessary by the child's mental condition by the parent, guardian or custodian;

(6) Found in a disreputable place or who associates with vagrant, vicious or immoral persons;

(7) Engaged in an occupation or in a situation or environment dangerous to life or limb or injurious to the health, morals, or welfare or himself or others;

(p) "Probation" means a legal status created by court order following an adjudication involving violations of law by the child, whereby the

child is permitted to remain in his home under prescribed conditions and under supervision by a probation officer designated by the court, subject to return to the court for further proceedings due to violation of any of the conditions prescribed.

(q) "Protective supervision" means a legal status created by court order in proceedings not involving violations of law by the child, whereby the child is permitted to remain in his home, and supervision and assistance to correct the neglect or dependency is provided by a probation officer or other agency designated by the court.

(r) "Residual parental right and duties" means those right and duties remaining with the parent after legal custody or guardianship of the person, or both, have been vested in another person or agency, including, but not limited to, the responsibility for support, the right to consent to adoption, the right to determine the child's religious affiliation, and the right to reasonable visitation unless restricted by the court. If no guardian has been appointed "residual parental rights and duties" also include the right to consent to marriage, enlistment in the armed forces, and major medical, surgical or psychiatric treatment.

(s) "Shelter" means the temporary care of children in physically unrestricted facilities pending court disposition or transfer to another jurisdiction.

(t) "Termination of parental rights" means the permanent elimination of all parental rights and duties, including residual parental rights

and duties, by court order.